

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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BILL DRAFT ~~2011-MG-5A~~2011-MG-5B\* ~~[v.9]~~ [v.8] (10/15)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

~~10/28/2010 11:59:58~~ 11/12/2010 10:51:47 AM

Short Title: Establish NC Health Information Exchange Act.

(Public)

Sponsors: Senator Stein./Representative Tillis.

Referred to:

A BILL TO BE ENTITLED

2 AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INFORMATION  
3 EXCHANGE ACT.

4 The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 90 of the General Statutes is amended by adding a new

Article to read:

"Article 29A.

"North Carolina Health Information Exchange Act.

**"& 90-413.1. Title.**

This act shall be known and may be cited as the "North Carolina Health Information  
Exchange Act."

**"& 90-413.2. Purpose.**

This Article is intended to improve the quality of health care delivery within this  
State by ~~establishing facilitating and regulating the use of~~ a voluntary, statewide health information  
~~exchange network for the secure~~

~~4515 exchange network for the secure~~ electronic transmission of individually identifiable health  
~~information among health plans.~~

~~4616 information among health plans,~~ health care clearing houses, and health care providers in a ~~manner~~  
~~that is consistent with the~~

~~4717 manner that is consistent with the~~ Health Insurance Portability and Accountability Act  
~~Privacy Rule.~~

~~18 and Security Rules.~~

**"& 90-413.3. Definitions.**

The following definitions apply in this Article:

(1) "Business associate" is as defined in 45 C.F.R. 160.103.

(2) "Business associate contract" means a contract that meets the standards  
specified in 45 C.F.R. 164.504(e).

(3) "Covered Entity" is as defined in 45 C.F.R. 160.103.

(4) "Disclose" or "disclosure" is as defined in 45 C.F.R. 160.103 as the release,  
transfer, provision of, access to, or divulging in any other manner of  
information outside the entity holding the information.

(5) "Emergency medical condition" means a medical condition manifesting  
itself by acute symptoms of sufficient severity, including severe pain, such  
that the absence of immediate medical attention could reasonably be

31 expected to result in (i) placing an individual's health in serious jeopardy (ii)  
32 serious impairment to bodily functions or (iii) serious dysfunction of any  
33 bodily organ or part.

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~~23(3,1~~ (6) "HIE Network" means the voluntary, statewide health information exchange

~~242 network established overseen and administered by the NC HIE pursuant to~~  
~~Gthis Article. S. 90-413.4 for the electronic exchange of~~

~~25 protected health information among covered entities.~~

~~26(4,3~~ (7) "HIPAA" means the Health Insurance Portability and Accountability Act of  
~~274 1996, P.L. 104-191, as amended.~~

~~28(5,5~~ (8) "Individual" is as defined in 45 C.F.R. 160.103.

~~29(6,6~~ (9) "North Carolina Health Information Exchange" or "NC HIE" means the  
~~7 nonprofit corporation selected by the Governor to serve as a sub-recipient of~~  
~~8 grant funds from the State-designated entity named by the State pursuant to~~  
~~9 Section 3013 of the federal Health Information Technology for Economic~~  
~~10 and Clinical Health Act of 2009.~~

~~11~~ (10

~~30 nonprofit, public/private partnership organization responsible for the~~

~~31 execution and oversight of North Carolina's health information exchange~~  
~~32 strategy.~~

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~~1(7)~~ "Opt out" means an individual's affirmative decision to disallow his or her

~~212 protected health information from being accessed disclosed by all or specific~~  
~~covered~~

~~313 entities to other covered entities through the HIE Network.~~

~~4(814~~ (11) "Protected health information" is as defined in 45 C.F.R. 160.103.

~~15~~ (12) "Public health purposes" means the public health activities and purposes  
~~16 described in 45 C.F.R. 164.512(b).~~

**17 "& 90-413.4. North Carolina Health Information Exchange; duties and responsibilities.**

~~18 The NC HIE shall have the following duties and responsibilities:~~

**5 "& 90-413.4. Statewide health information exchange network; creation and requirements.**

~~6(a)The NC HIE shall create 19 (1) To oversee and administer a voluntary, statewide healththe~~  
~~HIE Network in a manner that ensures all of~~

~~7 information exchange network ("HIE Network") for the secure electronic exchange of protected~~  
~~8 health information among covered entities.~~

~~9(b)The HIE Network shall be created and administered in a manner that ensures~~  
~~10all of 20 the following:~~

~~21 a. Compliance with this Article.~~

~~11 (1) Security and privacy for:~~

~~12 a. Adding, removing, disclosing, and accessing protected health~~  
~~13 information through the HIE Network.~~

~~14 b. Maintaining the integrity, accuracy, and confidentiality of protected~~  
~~15 health information that becomes a part of the HIE Network.~~

~~22 b. Compliance with HIPAA and any rules adopted under HIPAA,~~  
~~23 including the Privacy Rule and Security Rule.~~

~~24 c. Compliance with the terms of any business associate contract the NC~~  
~~25 HIE enters into with a covered entity participating in the HIE~~

26 Network.  
 16(2)27 d. Notice to all individuals about the ~~creation and administration of the~~  
HIE Network, including  
 17Network, including28 information and education about the right of individuals at any time  
 18at any time29 to opt out or revoke a decision to opt out.  
 19(3)30 e. Opportunity for all individuals to exercise at any time the right to opt  
out or  
 2031 out or revoke a decision to opt out.  
 21(4)32 f. Nondiscriminatory treatment by covered entities of ~~all~~ individuals who  
 2233 exercise the right to opt out.  
 23 ~~"& 90-413.5. North Carolina Health Information Exchange; powers and duties.~~  
 24The NC HIE shall have the following powers and duties:-  
 25(134 (2) To develop policies necessary ~~for the creation and administration of to oversee~~  
and administer the HIE Network in  
 26Network in35 accordance with this Article.  
 27(236 (3) To add, remove, disclose, and access protected health information through  
 2837 the HIE Network in accordance with this Article.  
 29(338 (4) To enter into a business associate ~~contracts contract~~ with each of the covered  
entity/entities  
 39 participating in the HIE Network.  
 40 (5) To grant user rights to the HIE Network to business associates of the  
 41 covered entities participating in the HIE Network, at the request of the  
 42 covered entities.  
 30participating in the HIE Network.  
 43 (631(4) To facilitate and promote use of the HIE Network by covered entities.  
 32~~"& 90-413.6~~44 (7) To periodically monitor compliance with this Article by covered entities  
 45 . ~~Participation by covered entities.~~ participating in the HIE Network.  
 46 ~~"& 90-413.5. Participation by covered entities.~~  
 3347 (a) Each covered entity that elects to participate in the HIE Network ~~may: shall enter into a~~  
 34(1)Notwithstanding any State law or regulation to the contrary, disclose an  
 35individual's protected health information through the HIE Network.  
 36(2)Access an individual's public health information through the HIE Network37for any purpose  
permitted by HIPAA, unless the individual has exercised the38right to opt out.  
 39(b)Each covered entity that elects to participate in the HIE Network shall enter into a  
 40-48 business associate contract with the NC HIE prior to disclosing or accessing any protected  
 41-49 health information through the HIE Network.

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1 (b) Each covered entity that elects to participate in the HIE Network may authorize its  
 2 business associates to disclose or access protected health information on behalf of the covered  
 3 entity through the HIE Network in accordance with this Article.  
 42(e)Each 4 (c) Notwithstanding any State law or regulation to the contrary, each covered entity  
 5 that  
 6 elects to participate in the HIE Network may disclose an individual's protected health  
 7 information through the HIE Network (i) to other covered entities or to researchers for any  
 8 purpose permitted by HIPAA, unless the individual has exercised the right to opt out and (ii) in  
 9 order to facilitate the provision of treatment for the individual's emergency medical condition,

9 subject to the requirements set forth in subsection (e) of this section.

10 (d) Except as otherwise permitted in subsection (e) of this section, each covered entity

11 that elects to participate in the HIE Network is prohibited from ~~doing any of the following with~~  
43 ~~doing any of the following with~~ 12 respect to an individual who has exercised the right to opt out:

44 13 (1) ~~Accessing-Disclosing the individual's protected health information through the~~  
HIE individual's protected health information to other covered

14 entities or to researchers through the HIE 45 Network for any purpose.

46 15 (2) Denying treatment or benefits to the individual based solely upon the  
individual's

47 16 individual's decision to opt out.

17 (e) A covered entity may disclose to other covered entities through the HIE Network

18 the protected health information of an individual who has exercised the right to opt out in order  
19 to facilitate the provision of treatment to the individual if all of the following criteria are met:

20 (1) The reasonably apparent circumstances indicate that (i) the individual has an  
21 emergency medical condition (ii) the protected health information

22 maintained in the HIE Network could assist in the diagnosis or treatment of  
23 the individual's emergency medical condition, and (iii) any delay associated

24 with attempting to obtain a revocation of the individual's decision to opt out

25 prior to rendering treatment could worsen the individual's emergency

26 medical condition or endanger the life of the individual.

27 (2) The disclosure through the HIE Network is limited to the covered entities  
28 providing diagnosis and treatment of the individual's emergency medical  
29 condition.

30 (3) Each covered entity involved in a disclosure pursuant to this subsection shall

31 document the circumstances and extent of the disclosure in the manner

32 prescribed by the NC HIE for the NC HIE to periodically audit the covered

33 entity's compliance with this subsection.

48 ~~"& 90-413.734 "~~ **§ 90-413.6. Construction and Applicability.**

49 35 (a) Nothing in this Article shall be construed to:

50 36 (1) Impair any rights conferred upon an individual under HIPAA~~-, including all~~  
37 ~~of the following rights related to an~~

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individual's protected health

38 information:

39 a. The right to request restriction of use and disclosure.

40 b. The right of access to inspect and obtain copies.

41 c. The right to request amendment.

42 d. The right to request confidential forms of communication.

43 e. The right to receive an accounting of disclosures.

44 (2) Authorize the disclosure of protected health information through the HIE

45 Network to the extent that the disclosure is restricted by federal laws or

46 regulations, including the federal drug and alcohol confidentiality

47 regulations set forth in 42 C.F.R. Part 2.

48 (3) Restrict the NC HIE or covered entities participating in the HIE Network

49 from disclosing protected health information through the HIE Network for

1(2)Prohibit the disclosure of 50 public health information obtained through the purposes, so long as  
disclosure is permitted by both HIPAA

2HIE Network when disclosure is authorized or required by State or federal

51 and State 3law.

1 (4) Prohibit the NC HIE or any covered entity participating in the HIE Network  
2 from maintaining in the NC HIE computer system a copy of the protected  
3 health information of an individual who has exercised the right to opt out, as  
4 long as the NC HIE does not access, use, or disclose the individual's  
5 protected health information for any purpose other than for necessary system  
6 maintenance or as required by federal or State law.

47 (b) This Article applies only to disclosures of protected health information made  
5-8 through the HIE Network. It does not apply to the use or disclosure of protected health ~~information~~  
~~in~~

6-9 ~~information in~~ any context outside of the HIE Network, including the redisclosure of  
protected ~~health information~~

7 ~~obtained through the HIE."~~

10 health information obtained through the HIE Network."